Judge: Hon. Marc L. Barreca
Chapter: Chapter 7
Hearing Date: September 7, 2012
Hearing Time: 9:30 a.m.

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN , Debtor.	Case No. 10-19817 **SECOND AMENDED DECLARATION OF DENICE MOEWES IN SUPPORT OF TRUSTEE'S OBJECTION TO PROOF OF CLAIM #21 FILED BY ROBERT DELLES FAMILY TRUST**

DENICE MOEWES declares under penalty of perjury of the laws of the State of Washington as set forth below.

1. I am over the age of 21 and am competent to make this declaration.

2. I am an attorney at the law firm of Wood & Jones, P.S., and we represent Ronald Brown, the Chapter 7 Trustee.

3. Attached hereto as Exhibit "1" is a true and correct of the document that was attached to proof of claim #21 filed by Adam Grossman on behalf of the Robert Delles Family Trust. This document indicates that $159,309.10 belonging to the Delles Family Trust was wired out of the Charles Schwab account maintained by Terrington Davies, LLC.

4. Attached hereto as Exhibit "2" is a true and correct copy the January, 2011 bank statement for the Ptarmigan Real Estate Fund, LLC showing the $159,309.10 wire going into this account. A true and correct copy of the actual wire transfer confirmation showing the sending and receiving party is also attached.

Wood & Jones, P.S.
303 N. 67th Street
Seattle, WA 98103

(206)623-4382

5. Attached hereto as Exhibit “3” is a true and correct copy of the Business Signature Card showing the sole signatory for the Ptarmigan Real Estate Fund, LLC account is Adam Grossman.

6. Attached hereto as Exhibit “4” is a true and correct copy of an email thread between Bob Delles and Jeffrey Bernstein dated April 2, 2011 that was provided to me by Stephen Porter, a partner with the law firm of Whitehead & Porter, 220 Montgomery Street, #1850, San Francisco, California 94104, who was the attorney for Delles Family Trust. A copy of the entire email thread is also on ECF, docket #304.

Signed and dated at Seattle, Washington this 21st day of August, 2012.

Denice E. Moewes

Wood & Jones, P.S.
303 N. 67th Street
Seattle, WA 98103

(206)623-4382

EXHIBIT“1”

charles SCHWAB

G000015360303

Schwab One® Account of
TERRINGTON DAVIES LLC

Account Number
3165-0556

Statement Period
January 1-31, 2011

01/18/11	01/18/11	Funds Paid	WIRED FUNDS DISBURSED	(159,309.10)

Dellas Family Tr investment in Ptarmigan

Schwab has provided accurate gain and loss information wherever possible for most investments. Cost basis data may be incomplete or unavailable for some of your holdings.
CT1G5821-001536 1385391

© 2008 Charles Schwab & Co., Inc. All rights reserved. Member SIPC. (0004-12863; 2002-240) STP25264R1-01

SIPC

EXHIBIT “2”

ACCOUNT STATEMENT

WEDGWOOD BRANCH
8405 35TH AVE NE
SEATTLE WA 98115

PAGE 1 OF 1

FOR CUSTOMER SERVICE CALL 1.800.461.0810,
IN THE SEATTLE AREA CALL 206.461.0810.
TTY/TDD USERS: 1.800.232.6299.

PTARMIGAN REAL ESTATE FUND LL
4001 KENNETT PIKE STE 134-753
GREENVILLE DE 19807-2315

ACCOUNT NUMBER
[redacted]7708
STATEMENT PERIOD
1-01-2011 TO 1-31-2011
C 1SK 0

www.bankofamerica.com
Our Online Banking service allows you to check balances, track account activity and more. Enroll now at www.bankofamerica.com.

SUMMARY OF YOUR ACCOUNTS

CHECKING

FIRSTCHOICE BUSINESS	[redacted]708
BEGINNING BALANCE	-25.00
DEPOSITS	159339.10
WITHDRAWALS	76265.40
SERVICE CHARGES/FEES	37.00
ENDING BALANCE	83011.70
MINIMUM BALANCE	-25.00
TOTAL NUMBER OF CHECKS	0

SAVINGS

FIRSTCHOICE BUSINESS	[redacted]7708
BEGINNING BALANCE	.00
ENDING BALANCE	.00
AVERAGE DAILY BAL	.00

FIRSTCHOICE BUSINESS CHECKING ACTIVITY

POSTED	TRANSACTION DESCRIPTION/SERIAL NUMBER	DEBIT AMOUNT	CREDIT AMOUNT	REFERENCE #
1-18	WIRE IN TIME:1645 ET TRN:2011011800445111			
1-19	DEPOSIT 0119WA353P000850876418		159,309.10	TTFT445111
1-18	WIRE TRANSFER FEE		30.00	M 08876418
1-18	WITHDRAWAL FOR CASHIERS CHECK	12.00		TTFT445111
1-19	CASH WITHDRAWAL MADISON PIKE	9,500.00		*621107045
1-20	WIRE TRANSFER FEE	5,000.00		*408105100
1-20	CASH WITHDRAWAL WEDGWOOD	25.00		TTFT293373
1-20	WIRE OUT TIME:1628 ET TRN:2011012000293373	9,600.00		*815110076
1-24	WITHDRAWAL FOR MONEY ORDER	25,000.00		TTFT293373
1-24	CASH WITHDRAWAL UNIVERSITY	965.40		*777105028
1-25	CASH WITHDRAWAL WEDGWOOD	8,600.00		*777105027
1-26	CASH WITHDRAWAL UNIVERSITY	8,800.00		*815110031
		8,800.00		*777106087

THANK YOU FOR BANKING WITH BANK OF AMERICA

< < < AIX VERSION 3.0 > > >

RUN 01/22/11 06:58

CONFIDENTIAL

SENDER PARTY NOT ON FILE
SENDER'S ID A/121000248

RN REF #: 20110118-00445111

**** MESSAGE ENVELOPE **** (Bank : NCX)

RC:FED CALLER:

SND DATE: 11/01/18
EXT:

PT# AMT:159,309.10 CUR:USD TRDR#
EST: DUE: TYP:FTR/ FNDS:S CHG:DB:N CD:N COM:N CBL:N

DBT A[redacted]48
EBIT VAL: 11/01/18
LLS FARGO BANK, NA
N FRANCISCO, CA

UNTRY OF RESIDENCY: US
DR REF NUM:2011011800121303
DERING BNK:S/CSCHUS6SWTS
ARLES SCHWAB AND CO., INC.
IRE TRANSFER SERVICES)
N FRANCISCO,CA,US
IG:/31650556
RRINGTON DAVIES LLC 1916 2ND AVE
SEATTLE WA 98109

F NUM:0000268962694

CDT *D/WAX[redacted]7708 ADV:LTR
CREDIT VAL: 11/01/18
PTARMIGAN REAL ESTATE FUND LL
4001 KENNETT PIKE STE 134-753
GREENVILLE DE 19807-2315
BNF:/23377708 CHG:B BK?N
PTARMIGAN REAL ESTATE FUND LLC
GREENVILLE, DE US

ORIG TO BNF INFO:
SCH REF(Y 1 0000954776910)

**** MESSAGE TEXT ****

.00} Message Disposition:
Format Version: 02 (New expanded format)
Test Production Code: P (Production)
Msg Duplication Code: (Original incoming msg)
Msg Status Indicator: N (Incoming msg)

.10} Acceptance Timestamp:
Receipt Date: 01/18
Receipt Time: 16:44
Receipt Application Id: FT03

20} OMAD:
Output cycle date: 2011/01/18
Output Destination Id: B6B7HU2R
Output sequence number: 014613
Output date: 01/18
Output time: 16:44
Output application Id: FT03

EXHIBIT “3”

Bank of America

☐ CA ☐ ID ☑ WA

Business Signature Card with Substitute Form W-9

Account Number: 23377708

Bank Number: 353

Account Type: ☐ DDA ☐ SAV ☑ CD

Account Title: PTARMIGAN REAL ESTATE FUND LLC

☐ Temporary Signature Card

Legal Designation: ☐ Individual/Sole Proprietor ☐ Corporation ☐ Partnership ☐ Association ☑ Limited Liability Company

Tax Identification Number: [redacted]2035

By signing below, I/we acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) If this account is a deposit account, the Deposit Agreement and Disclosures, the Business Schedule of Fees, and (2) if this account is a Line of Credit, the applicable Line of Credit Agreement and Disclosures. Furthermore, I/we acknowledge the receipt of these documents. By signing below, I/we acknowledge and agree that the signature(s) will serve as verification for any transactions in connection with this account, and any Line of Credit checks which I/we may sign, and as the certification (set forth below) of the taxpayer identification number to which I/we want interest reported. The Deposit Agreement includes a provision for alternative dispute resolution.

Substitute Form W-9. Certification - Under penalties of perjury, I certify that: (1) The number shown on this form is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and (2) I am not subject to backup withholding because: (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a U.S. citizen or other U.S. person (defined in the instructions).

Certification Instructions: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (See also IRS Instructions for Form W-9.)

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

☐ Exempt (check if applicable)

☐ **Nonresident Alien Status (if applicable). If all beneficial owners are considered Nonresident Aliens under the United States tax law, check here and complete and sign the applicable Form(s) W-8.**

	Name (typed or printed)	Title (if applicable)	Signature	Date
1	ADAM R GROSSMAN	MEMBER	A. Grossman	05142009
2				
3			AS Managing Member PREF LLC	
4				

ATM/Deposit Check Card Request

Provided that the account referenced above is eligible to receive automated teller machine cards and/or Check Cards, I (as authorized by the resolution and/or court documents and/or other agreements which authorize this account) hereby request the issuance of such cards to any of the authorized signers on this account.

Signature ______________________ Title ______________________

Bank Information

Customer 1

Name ADAM R GROSSMAN

	ID Type	ID #	ID Issuer	Issue Date	Expiration Date
CIP Information:	DL	[redacted]989	PA	05/10/2009	11/24/2012
CIP Information:	VISA	0320	CHASE	NONE	09/2014

Customer 2

Name

	ID Type	ID #	ID Issuer	Issue Date	Expiration Date
CIP Information:					
CIP Information:					

Customer 3

Name

	ID Type	ID #	ID Issuer	Issue Date	Expiration Date
CIP Information:					
CIP Information:					

Customer 4

Name

	ID Type	ID #	ID Issuer	Issue Date	Expiration Date
CIP Information:					
CIP Information:					

Review Information

Business Entity Inquiry:

If Sole Proprietor, General Partners or Associated/Unincorporated Group Members, complete the following:

Name:	Year:	State:

Date [illegible] Banking Center Name & Cost Center: [illegible]

Associate Name [illegible] Associate Phone Number: [illegible]

90-53-2297NSBW 04-2009

EXHIBIT "4"

Resignation Effect?

Bob Dellas

From: "Jeff Bernstein" <jrb@post.harvard.edu>
To: "Bob Dellas" <BobDellas@earthlink.net>
Sent: Monday, April 11, 2011 11:31 AM
Subject: Re: Tanager Fund

Bob-

Thanks for maintaining your spirit of equanimity. You do not sound to me "too stringent" or in any way unreasonable.

I agree with you that I "could be facing the full financial consequences of Adam's misdeeds." As I said, I have not researched this area of the law.

To clarify my position: I am not claiming that even though I was the General Partner, Adam's (arguably fraudulent, arguably criminal) actions insulate me from liability, but that my resignation from the General Partnership prior to and without knowledge of Adam's intentions/deeds relieves me of any responsibility. I am confident that the records from our broker, Schwab, will show that all limited partners' funds were in the account at the time I resigned from the General Partner.

Having resigned prior to Adam's unapproved withdrawal of funds, the questions are: one, whether my resignation is effective to separate me from Adam's actions; and, two, whether I was required to notify you of my resignation, and if so, whether a failure to notify you makes me responsible for what Adam has done.

I agree with you that we are in no position to talk about a settlement without an understanding of the strength of our legal positions. My desire at this point is that we both hold off on spending the money to obtain those legal positions in the hope that Adam will make it right, which he has represented to me he is confident he will do. I feel it is okay of me to suggest we wait because to do so does not weaken your legal position-- as long as you are within the statute of limitations you may sue either or both of us.

If, however, you believe your position is weakened by waiting, I will as you suggest seek legal advice as to the relative strength/weakness of my position.

-Jeff
206-795-8327

On Sat, Apr 9, 2011 at 12:39 PM, Bob Dellas <BobDellas@earthlink.net> wrote:

Hi Jeff,

Thank you for your congenial response to my previous email. I did receive only one copy and am pleased to know that Sandy is doing well; the same for me.

I agree that we should keep our dialogue open, decent and honest towards a non-litigation resolution. I think that your summary, "If I were you I'd think it should be me, and likely if you were me you'd think it should be you." is the natural response that we would each take based on our interpretation of the facts as we know them. Unfortunately, I am the one currently bearing the entire brunt of Adam's actions; I am the one out the money that is unarguably due me. As a result, it is I, who am forced to take the proactive position. If I write or say anything that sounds too stringent, that is not my intent. I respect your integrity, demonstrated honesty, and professional stature. I believe that we both seek an equitable resolution, even though we are currently in an inherently confrontational situation.

From your email, you apparently believe that your financial exposure from your role as President and Secretary of the General Partner, Terrington Davies, LLC, is remote. On the other hand, I believe that you could be facing the full financial consequences of Adam's misdeeds. I agree with you that Adam "is a deeply honest person who has made some poor choices under an emotional strain." Unfortunately, since he is coming out of a divorce and Chapter 7 bankruptcy, it would appear that he is unable to provide any monetary restitution to this situation, either now or in the foreseeable future. That leaves us in a dilemma of who should bear the loss of the missing money; you as a general partner or I as the unpaid limited partner. Obviously, that quandary and its factual determinations are yet to be determined.

In order for us to reach a timely private settlement, it will be necessary for you to realize that you could be facing serious potential consequences, both financial and otherwise. If you do not, you would understandably have no interest in settling with me and I would be forced to assess my position and options with a lawyer. I doubt that there is anything I could say that would convince you to change your current position. Therefore, I would suggest that we each seek further legal advice and then get back together in about two weeks by voice or email to discuss a possible private settlement. Perhaps further legal consultation will lead us to a mutual understanding and the proper course of action.

Without debating each other's points, let me describe my position and how I got there. As a defrauded Limited Partner and now creditor, my recourse has to be against the General Partner, not Adam Grossman individually, as you suggest. It was the General Partner that had fiduciary responsibilities and reporting obligations to me under the law and as spelled out in The Limited Partnership Agreement. It is paragraph 14.2 of that agreement that provides me with recourse to the General Partner for "reckless and fraudulent management of the Partnership". And it is a filing against the General Partner that will preserve my claim against the statute of limitations. I believe that a subsequent determination would be necessary to limit my financial relief solely to Adam.

I think the resolution to our mutual dilemma resides in the applicable law regarding the responsibilities of both a fiduciary and a general partner as to diligence, disclosure and consequences of non-disclosure. Suffice it to say, neither of us are apparently fully aware of the full extent or timing of Adam's breaches, nor are we fully versed in the current applicable law that may apply. In order for us to reach an agreement without litigation, it is incumbent that we first understand the strength of our individual positions, our potential financial liabilities and the possible implications of resorting to a court settlement.

I have not as yet contacted a lawyer in this matter. However, it does not take a genius to realize that I am already at a $161,737 financial deficit, with nowhere to go, but up. Thus, I am the most motivated to initiate corrective action as soon as possible.

Even though I am by no means a lawyer, the bases of my understandings in this area have been garnered from my roles as a general partner in approximately fourteen fiduciary and operating limited partnerships. My general partner role was in the form of either an officer of a special purpose corporation or as a general partner of a general partnership that acted as the general partners of the limited partnerships. We fellow officers and general partners were made well aware of the potential personal consequences from actions of the others on behalf of the general partner of the limited partnerships.

I structured these transactions and was intimately involved with the preparation of the Limited Partnership Agreements and Private Placement Memoranda. I received my education on disclosure requirements and fiduciary and general partnership responsibilities from some of the best New York City law firms, including Willkie, Farr & Gallagher and a firm that is now part of Paul Hastings. That education was refreshed and enhanced during nearly four years of trial preparation against a class action lawsuit filed by a contingent fee trial lawyer on behalf of several of these limited partnerships. Lehman Brothers was a co-defendant, aka the "deep pockets", and spent over $3 million on the defense preparation for trial. Our lawyers in that case were Simpson Thatcher of NYC and Locke Purnell Rain Harrell of Dallas. I mention this background solely so that you may understand the basis for my position. I realize that the law in this area can change and I may be out of date.

In a spirit of moving forward, I would ask that you either research this area of the law more thoroughly on your own or seek the advice of another attorney who is an expert on the subject. Please share our exchange of emails, as I think we have mutually identified the issues in them. I shall do the same and we shall proceed from there. I hope to talk with you soon.

Regards,

Bob

(415) 928-3062

----- Original Message -----
From: Jeff Bernstein
To: Bob Dellas
Cc: Adam R. Grossman
Sent: Sunday, April 03, 2011 6:14 PM
Subject: Re: Tanager Fund

Bob-

If this is a repeat of an earlier email, I apologize. I had drafted a response which disappeared. I don't think I sent it but maybe somehow it got sent anyway.

I'm sorry that this matter is weighing you down in the midst of your recent surgery. I hope you're doing better. My wife Sandy is doing very well; thanks for your regards.

I certainly don't begrudge you your concern, or even your anger. I am deeply disturbed about what Adam appears to have done also. I don't know what to make of it. For what it's worth I believe Adam has no intention of stealing your money. I believe he is a deeply honest person who has made some poor choices under an emotional strain.

I appreciate your sense that I am liable for Adam's actions. As you are aware, though, the events resulting in the present situation occurred after the partnership (Terrington Davies LLC, the General Partner) was dissolved as a result of my resignation. I don't think I am liable to you, but I am not an expert in that area of the law. As you point out, it will turn on my duties to inform you, and the penalties, should I have had such a duty. If I do have such a duty, I will do as I am required.

You mention three facts you believe you should have been informed of: Adam's filing for bankruptcy, the suspension of trading, and my resignation.

I did not feel Adam's bankruptcy was material to the administration of the Fund. While the bankruptcy certainly could affect the assets in the LLC/General Partner and those assets of Adam's in the Fund, I did not see how it could affect the investors' funds. These were not Adam's property and therefore not reachable by his creditors.

I asked Adam to suspend trading because I felt his divorce was getting in the way of his ability to attend to the Fund. I did not feel this suspension was information material to the investors because it was temporary, it did not involve any new uses of the funds, and it did not involve any increased risk to the Fund. While we suspended trading the monies were in an interest-bearing account at Charles Schwab.

I did not feel I was required to notify you that I was resigning from the Fund because my presence had not been an inducement for you to make your investment.

To the best of my knowledge, at the time of my resignation, "all funds were in a fiduciary account adequate to meet all obligations and redemptions." If, as you say, Adam removed monies that were not his and used them for purposes other than investing them in good faith on behalf of investors, I was unaware of that, and had I known about it I would have forbidden it.

I would ask you not to retain counsel immediately. I think that will only result in all of us ending up with less. Additionally, insofar as the best result here is that Adam will earn the money back, I think that bringing attorneys in will only get in his way of doing that.

However, I don't want to discourage you from protecting your legal rights. You should find out what the statute of limitations is for this type of claim. If Adam hasn't repaid you by the time the statute of limitations draws near, you'll need to file suit to protect your rights.

I appreciate your tone in your response to me. I think we recognize that one of us may have to bear the brunt of Adam's actions. If I were you I'd think it should be me, and likely if you were me you'd think it should be you. I hope that you and I can continue to be decent to one another given the severity and gravity of this situation.

I plan to be honest with you at all times. If there comes a time when our interests so diverge that "full disclosure" is no longer in my best interests, rather than mislead you I will tell you that we can no longer discuss the matter openly, and that we must go to our foxholes for the duration. I hope it does not come to that.

I hope you will keep the lines of communication open between us.

-Jeff
206-795-8327

On Sat, Apr 2, 2011 at 1:06 PM, Bob Dellas <BobDellas@earthlink.net> wrote:

Hi Jeff,

Thank you for getting back to me so quickly. I'm sorry I didn't do the same. I had cataract eye surgery Thursday morning and have been in excruciating pain and unable to open either eye since then. I'm just now getting some relief.

First, I hope your wife is doing well and her surgery was not too serious. I agree that it would be best to protect her from the messy details of The Tanager Fund at this time. I have already had to tell my wife about this incident and it was not pleasant. What makes it especially difficult, is that my wife and I have known Adam since he was 6 years old. We both worked with his father and shared many good times, travels, and life growing experiences together. We know that Adam has been going through a turbulent divorce but still terribly disappointed at the way this investment has played out.

I was made aware via email that the Tanager Fund was closing down on 12-6-10 and expected my distribution to be forthcoming immediately or shortly thereafter. I pursued it with Adam and he said it was somehow tied up in his divorce because of an erroneous court ruling by the Family Law Court. I wondered why even the nastiest divorce lawyer would dare to attach a fiduciary or custodial account holding investors' money or how any court could rule in favor of such a motion, but I trusted Adam and believed his explanations. I finally confronted Adam on Sunday March 20, 2011 and asked him very specific questions, including the person at the court holding the funds. Adam proceeded to give me varying stories that were not exactly consistent but I did find out a lot of information that I feel I should have previously been provided by the General Partner. Amongst the facts that I became aware of that night were:

1. Adam filed for bankruptcy (Chapter 11 or 7?) sometime in 2009
2. The Fund stopped trading in August or September, 2010
3. You resigned as the President of the General Partner in November, 2010

Adam called me back late that Sunday night to admit that he had been lying and leading me on about getting my distribution. He then admitted that the money was not available. The trustee in his bankruptcy was not holding the money, as he had previously claimed. He also admitted that he had previously transferred monies out of the Tanager account and concurrently deposited another check in the same amount into the Fund in order to assure good funds for a personal real estate transaction. I do not know all the facts at this time, especially where the money went and when. There has obviously been a severe breach of fiduciary responsibility by the General Partner, Terrington Davies LLC. Unfortunately, I am out $161,737 based on the Fund's closing NAV and I intend to collect it.

Unfortunately for you, Jeff, you were the President and Secretary of the issuing General Partner that took in funds to trade on behalf of the Limited Partners with very specific terms for both parties. You collected fees and signed correspondence on behalf of the General Partner. You, as a corporate lawyer with sterling academic credentials, were an integral officer of the managing General Partner. Even though you claim to have resigned in November, 2010, you did not provide any notice of that fact to us Limited Partners. Regardless, you cannot just resign from your fiduciary responsibilities, especially without notification to the Limiteds. You had an ongoing obligation to notify us Limited Partners of this major change in management, assure us that all funds were in a fiduciary account adequate to meet all obligations and redemptions, and reiterate that we were free to redeem our units immediately or at the end of that month. You said that you were surprised that I did not receive my distribution. However, you were in a fiduciary position of being responsible for knowing the status of the funds entrusted to Terrington Davies, LLC.

I assume that you and Adam have a lot to talk about. I would suggest that you and he work out an agreement amongst yourselves by which I can be paid fully and fairly in a somewhat timely manner with adequate assurances. I also assume that the 2010 K-1 will adequately reflect the assets, liabilities and activities of The Tanager Fund for the last year and that you will inform the accountants of any non-distributions.

I am desirous of resolving this situation amicably amongst ourselves in an equitable way. I look forward to speaking with you by phone or email towards that end. However, if you would prefer that I procure a lawyer for any future conversations, I will do so. Just let me know your wishes.

With Best Regards,

Bob Dellas

FYI I am attaching my summary analysis of this investment in The Tanager Fund as I had promised Adam

--
Jeff Bernstein
1916 2nd Ave. N
Seattle, WA 98109-2505
206-795-8327

"You'll never run out of people you can help." --Chuck Feeny, Founder, The Atlantic Philanthropies

--
Jeff Bernstein
1916 2nd Ave. N
Seattle, WA 98109-2505
206-588-0343

"You'll never run out of people you can help." --Chuck Feeny, Founder, The Atlantic Philanthropies